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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 899.

PERRY L. DAVIS and CLAUDE C. BLEDSOE,
Petitioners,

vs.

STATE OF IOWA,
Respondent.

BRIEF IN BEHALF OF STATE OF IOWA, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOHN M. RANKIN, Attorney General of Iowa,
JENS GROTHE, Assistant Attorney General of Iowa,
Attorneys for State of Iowa, Respondent.

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STATEMENT OF THE CASE.

Petitioners, Perry L. Davis and Claude C. Bledsoe, were found guilty of the crime of conspiracy by a jury in the District Court[1] of Woodbury County, Iowa. An appeal was perfected to the Supreme Court of Iowa, which on the 8th day of April, 1941, affirmed the decision of the lower court. Subsequently and within the time required by law petition for rehearing was filed by Petitioners. Resistance thereto was filed by the State and subsequently the same was fully argued to the Appellate Tribunal of this State which shortly

thereafter denied the same. The case is now pending in this Court upon petition for writ of certiorari.

Petitioners assign as their sole and only ground for relief the alleged misconduct of the bailiff in charge of the trial jury during its deliberations.

ARGUMENT.

RESPONDENT ASSERTS THAT THE RECORD FAILS TO IN ANY MANNER SHOW THAT THE BAILIFF WAS GUILTY OF MISCONDUCT. THE EVIDENCE WITH REFERENCE TO WHAT THE BAILIFF DID AND SAID WAS IN CONFLICT. THE DETERMINATION OF THIS QUESTION WAS FOR THE TRIAL COURT IN RULING UPON PETITIONERS' MOTION FOR A NEW TRIAL. SUCH RULING WAS, UPON SUCH CONFLICTING EVIDENCE, ADVERSE TO THESE PETITIONERS. THE APPELLATE TRIBUNAL FOUND AND DETERMINED THAT IN SO RULING UPON SAID QUESTION THE TRIAL COURT DID NOT ABUSE ITS DISCRETION. CLEARLY, THE ORDER OF THE TRIAL COURT OVERRULING THE MOTION FOR A NEW TRIAL ON THE GROUND OF THE ALLEGED MISCONDUCT OF THE BAILIFF AND THE AFFIRMANCE OF SUCH ORDER BY THE SUPREME COURT IS NOT A FEDERAL QUESTION AND THEREFORE THIS COURT HAS NO JURISDICTION TO HEAR AND DETERMINE THE ISSUES INVOLVED HEREIN.

Petitioners have failed to set out the complete record with reference to the alleged misconduct of the bailiff and we now undertake to supplement the same as follows:

We set out, first, in its entirety, the affidavit of the bailiff, Royal A. Smith:

> "I am bailiff to Judge A. O. Wakefield; William Leis is bailiff to Judge Munger; we were sworn and were in charge of the jury in the State of Iowa vs. Claude Bledsoe and Perry Davis. Leis and I took charge of the jury after the instructions were given and the jury began

deliberations about 10:30 A. M., April 10, 1940; the jury was out till 5:10 P. M., April 11, 1940. About 3 P. M., April 11, 1940, I received a signal from the jury room upstairs; went to the door and asked what was wanted. McPherran, the acting foreman, stated: 'We have taken our final ballot.' I said, 'That's fine. Have you signed the verdict?' He answered, 'No, we haven't signed the verdict. We have simply voted that we cannot get together.' I then said, 'Nothing doing. You can't do that. Go back and go to work on it some more.' He said, 'We have voted and cannot get together and they say they will not change their vote. How long will we have to stay up here?' I then said, 'I don't know. That is entirely up to the judge. You'll have to stay there until he excuses you.' He then said, 'Will you tell the judge?' I said, 'Sure.' I reported the matter to the court, received no order and returned to my place in charge of the jury. The jury did not complain of physical discomfort or mental ailment or handicap."

Louis Spillman testified:

"I was on the Bledsoe-Davis jury. The deliberations commenced at 10:30 A. M., April 10, 1940; at 3 P. M. on the 11th of April, 1940, the foreman called the bailiff. Royal Smith responded. He made no statement as to how long the jury would have to remain on the case; the two women were in their dormitory; the foreman sent in jurors one at a time to talk to them at their request until four or five had talked to them. At about 5 o'clock we arrived at the verdict and returned it into court. My verdict was not influenced by anything said or done by the bailiff but was based on evidence and instructions of the court."

George Card testified:

"I was on the Bledsoe-Davis jury. The substance of the talk between Royal Smith, bailiff and the foreman, when we were deliberating was that we had reached an agreement; the bailiff then asked if the verdict had been signed. He replied, 'No, we have agreed that we can't agree.' The bailiff said, 'No, you can't do that. You'll have to go back and work on it a while.' The bailiff told the foreman that he would tell the judge. He said

the time we would have to stay would depend upon the judge. My verdict was based on the evidence and the court's instructions."

Peter A. John testified:

"I was on the Davis-Bledsoe jury. I experienced no physical or mental fatigue or exhaustion in deliberating on this case. The verdict was based by me on evidence and the court's instructions."

We have not attempted to set out all of the affidavits filed by the State in resistance to petitioners' motion for new trial. We have, we believe, by the affidavits that we have set out, shown to this court that the bailiff did not in any manner misconduct himself.

It is true that the affidavits of petitioners, as to the conduct of the bailiff, is at variance to some extent with those of the affidavits filed by the State. However, it was for the court, who saw and heard the witnesses, to determine who told the truth. The trial court expressly found and determined that no misconduct which in any manner prejudiced the rights of the defendants had been committed by the bailiff. The Supreme Court of this State found that in so ruling the court did not abuse its discretion. Certainly the ruling of the Supreme Court on this disputed factual issue is not a federal question.

With reference to the assertion made by petitioners to the effect that they were convicted upon "paid perjured testimony" have to say that in our humble opinion, this is wholly unwarranted and that no basis exists therefor whatever.

The writer of this brief has examined some of the affidavits now in the possession of the petitioners' counsel. In some instances, these affidavits go no farther than to express an opinion that certain named witnesses who testified during petitioner's trial perjured themselves. We also state

professionally that in most instances such affidavits have been furnished by persons of low repute and bad character.

A representative from the Attorney General's office, namely one Horace Pike, assisted the County Attorney of Woodbury County at the trial of petitioners.

The writer of this brief states professionally without hesitation that Mr. Pike would not knowingly be a party to bring about the conviction of petitioners upon perjured testimony.

CONCLUSION.

1. It is our conclusion that the affidavits filed by petitioners, when considered together with the affidavits filed by the State, establish that Royal A. Smith, the bailiff was not guilty of misconduct.

2. The alleged misconduct of a bailiff who has a trial jury in charge in a criminal case, is not a federal question and, therefore, this court has no jurisdiction to hear and determine the issues involved herein.

3. If, as claimed by petitioners, they have been convicted upon perjured testimony, or if for any other reason have been deprived of a fair and impartial trial, recourse may be had by application to the executive authority of this state who has full power to suspend the sentence imposed by the court or to grant them a full pardon. It is to be presumed that if petitioners can make proper showing to the executive he will afford them the relief prayed.

We, therefore, respectfully request that petitioners' Petition for Writ of Certiorari be denied.

Respectfully submitted,

JOHN M. RANKIN, Attorney General of Iowa,
JENS GROTHE, Assistant Attorney General of Iowa,
Attorneys for State of Iowa, Respondent.